

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN FLOYD VOSS,

Petitioner,

vs.

GREG COX, et al.

Respondents.

Case No. 3:11-CV-00223-LRH-(WGC)

ORDER

Petitioner has submitted an application for certificate of appealability (#66). For the reasons stated below, the court denies the application.

Petitioner first argues that the court should issue a certificate of appealability for ground 1(d). The court already has denied a certificate of appealability for that ground and will not revisit the issue. Order, p. 1-2 (#64).

Petitioner next argues that the court should issue a certificate of appealability for ground 1(h), a claim that at trial the prosecution introduced evidence that had been seized illegally without a valid search warrant or petitioner's consent, in violation of the Fourth Amendment. The court held that petitioner had a full and fair opportunity to litigate this issue in state court, and thus petitioner could not raise the issue in federal habeas corpus. Order, p. 2 (#46) (citing Stone v. Powell, 428 U.S. 461, 481 (1976)). Petitioner argues that jurists of reason would find this conclusion debatable because his counsel did not file a motion to suppress the evidence before trial and did not object to the evidence at trial. What petitioner describes is a claim of ineffective assistance of counsel, which is separate and distinct from a claim that the Fourth Amendment was violated, and which is not

1 barred by Stone v. Powell.¹ Kimmelman v. Morrison, 477 U.S. 365 (1986). Reasonable jurists
2 would not find the court's conclusion to be debatable or wrong, and the court will not issue a
3 certificate of appealability for ground 1(h).

4 The court dismissed grounds 4 and 5 because they are claims of error in the state post-
5 conviction proceedings, and such claims are not addressable in federal habeas corpus. Order, p. 2
6 (#16), Order, p. 2 (#46) (both citing Franzen v. Brinkman, 877 F.2d 26 (9th Cir. 1989)). Reasonable
7 jurists would not find the court's conclusions to be debatable or wrong, and the court will not issue a
8 certificate of appealability for grounds 4 and 5.

9 IT IS THEREFORE ORDERED that petitioner's application for certificate of appealability
10 (#66) is **DENIED**.

11 DATED this 20th day of January, 2012.



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14 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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28 ¹Petitioner raises such a claim in ground 2(d).